

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM M-42315 of 2023
Date of Decision: 21.03.2024

Vishal Rai ...Petitioner
Versus
Union of India and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate, for the petitioner.

Mr. Sourabh Goel, Sr. Standing counsel with
Mr. Tej Bahadur, Advocate, for CBIC-UOI.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in complaint case, i.e., COMA/4682/2023 dated 06.03.2023 under Sections 132(I) (b) & (c) of punishable under Sub-Clause (I) of Section 132 (1) of CGST Act, 2017 read with section 20(XV) of IGST Act, 2017, pending in the Court of Chief Judicial Magistrate, Ludhiana.
2. Learned senior counsel submits that the petitioner has been falsely involved in the complaint case captioned above, which has been filed by the respondents on 06.03.2023. He further contends that in the present case, the petitioner was arrested on 07.01.2023 under Section 69 of the CGST Act, 2017 and, thereafter, the present complaint was instituted against him. However, it has been wrongly

alleged that the petitioner was involved in the fraudulent passing of Input Tax Credit without actual supply of goods in order to facilitate fraudulent availment of Input Tax Credit in violation of the provisions of CGST Act. In reality, the petitioner is a petty businessman and earns his livelihood with great difficulty. The petitioner had neither supplied any goods nor provided any services without invoices and did not claim Input Tax Credit at any point of time. Learned senior counsel further contends that the petitioner is neither proprietor nor owner of any of the Firms, i.e., S.K. Traders and Jai Ambey International and there was no question of evasion of tax, as alleged in the complaint. Learned senior counsel further contends that the petitioner is in custody for the last 01 year and 02 months and the offence is triable by the Court of Magistrate. Thus, the trial Court may take considerable time in concluding the trial.

3. On the other hand, learned counsel for the respondents has vehemently opposed the submissions made by the petitioner. Learned counsel further submits that there was sufficient evidence to show that the petitioner had violated the provisions of Section 132(1)(b) and 132(1)(c) of the CGST Act and the petition is liable to be dismissed by this Court.

4. I have heard learned counsel for the parties and perused the record.

5. It has been held by the Hon'ble Supreme Court of India in the matter of Sanjay Chandra Vs. CBI, 2011(4) R.C.R. (Criminal) 898 and 2011 AIR (SCW) 6838 as follows:-

“14. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction

has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15. In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is 'the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Criminal Procedure Code confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our

*opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual. This Court, in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, 2005(1) RCR (Criminal) 703 : 2005(1) Apex Criminal 307 : (2005)2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."*

6. Having heard the learned counsel for the parties and perusal of the record, this Court has arrived at the conclusion that the petitioner deserves to be released on bail in the present case. No doubt, the respondents have levelled specific allegations against the present petitioner, yet, the criminal liability of the petitioner is yet to be decided by the trial Court during the course of trial. Still further,

the petitioner was arrested in the present case on 07.01.2023 and the maximum sentence provided under the statute is five years. Still further, the case of the prosecution is based on the testimonies of official witnesses and the petitioner may not be in a position to influence the witnesses, who are to be produced by the prosecution before the trial Court. Even otherwise, the petitioner cannot be confined in jail as an under-trial for an indefinite period.

7. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

(i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts to the Court or to any other authority.

(ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.

(iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned. (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.

(v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of

residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.

(vi) In case, the petitioner gets involved in any other criminal activity, during the pendency of the trial, it shall be viewed seriously and the prosecution shall be at liberty to move an appropriate application for cancellation of bail granted to the present petitioner.

(vii) The concerned Court may insist two heavy local surties and may also impose any other condition, accordance with law, while accepting the bails bonds and surety bonds of the petitioner.

21.03.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No